CONSOLIDATED PLANTATION BHD.

v.

PEMUNGUT HASIL TANAH KELANG

FEDERAL COURT, KUALA LUMPUR
SALLEH ABAS CJ (MALAYA)
ABDUL HAMID OMAR OMAR FJ
SYED AGIL BARAKBAH FJ
[CIVIL APPEAL NO. 94 OF 1983]
20 JANUARY 1984

LAND LAW: *Land Acquisition - Acquisition by Government - Award - Whether inadequate - Injurious effect of acquisition on other property - Paragraph 2(d), First Schedule - Land Acquisition Act 1960.*

The appeal arose out of the Selangor State Government acquiring large tracts of land belonging to the appellant company for a housing scheme. The total area acquired was part of the appellant company's estates. The appellant company asked for compensation under a number of claims, but the Collector made an award regarding the first claim only. On appeal, the award was increased. The appellant company accepted the judgment regarding three of the claims but appealed against that part regarding the loss of water supply to their mill.

Held:

[1] On the evidence before the trial Judge, there seemed to be no dispute as to injurious effect on the mill of the appellant company's acquisition as contemplated by para 2(d) of the First Schedule of the Land Acquisition Act 1960.

[2] However, the compensation awarded was reasonable. The loss of source of water supply to the mill was minimal and the approach adopted by the Judge to award the cost of turfing the acquired area as a measure of damage was reasonable in the circumstances and should not be interfered with.

[Appeal dismissed.]

For the appellant - Wong Chong Wah; M/s. Skrine & Co.
For the respondent - Dato Abdul Malik bin Mohd Salleh, Penasihat Undang-undang Negeri Selangor

JUDGMENT

Salleh Abas CJ (Malaya):

This is an appeal arising out of the Selangor State Government acquiring large tracts of land belonging to the appellant company on 5 May 1973 for the purpose stated in the State Government *Gazette* Notification of that date to be for a "housing scheme". (Selangor *Gazette* Notification No. 213/73). The total acquired area, 491.7 acres in all, was part of the appellant company's estate, known as Bukit Raja Estate, which before the acquisition had a total acreage of 1711.2 acres. The acquired area consists of portions of four lots, i.e. Lots Nos: 2897, 3903, 93 and 344.

In the hearing before the Collector the appellant company asked for a total compensation of RM25,236,240 made up as follows:

(a) value of the land at RM19,910 per acre for 491.7 acres	...	RM 9,790,000
(b) diminished value of the remaining lot not acquired at RM10,780 p.a. for 34.32 acres	...	370,000
(c) accomodation works	...	314,250
(d) loss of water supply and consequential closing of mill	...	14,657,250
(e) surveyors' fee at 1%	....	104,740

The Collector only made an award as regards claim under (a) at RM7,500 per acre and nothing else. In the Reference before Abdul Razak J the appellant withdrew their claim (c), but continued to press their claims (a), (b), (d) and (e). The learned Judge increased the Collector's award as follows:

(a) value of the land at RM12,000 p.a. for 491.7 acres	...	RM5,900,400
(b) diminished value of the remaining area of 34.32 acres not acquired at RM6,000 p.a.	...	205,920
(c) claim abandoned		
(d) loss of water supply to be compensated by turfing	...	231,000
		RM6,337,320

The learned Judge allowed the claim for survey fee at 1% of the land value (RM6,337,320) and also ordered interest at 6% from the date of taking possession till the date of realization.

The appellant company accepted the judgment as regards claims (a), (b) and (e) but disputed that part which pertains to claim (d), i.e. an award of RM231,000 as the cost of turfing as compensation for the loss of water supply to the mill. Hence the appeal relates to that part of the judgment only.

The acquired area is part of the appellant company's Bukit Raja Estate. In this estate there is an oil palm mill and also an SMR rubber factory. The mill was built in 1965 at a cost of RM6,675,846 (See p. 108 appeal record, Part II). It started production in January 1966 and is capable of processing 60 tons of palm oil fruits an hour. It requires 553,500 gallons of water per day to operate at its maximum capacity and also a stand-by supply of 25,000,000 gallons of water at all times. (See p. 98 of Appeal Record, Pt. II). The mill and the factory lie outside the acquired area, but the appellant company rely for their water requirements to operate the mill on the water from the catchment area which is within the Estate itself. Part of the catchment area is now acquired by the present acquisition exercise. It is the contention of the appellant company that the acquisition has so fragmented the catchment area that what is left of it would be so small as to result in a considerable reduction of water supply to the mill and that this loss would in turn affect the mill's productive capacity and that, therefore, the appellant company should be entitled to a compensation for the damage.

This claim is obviously made under sub-paragraph (d) of para. 2 of First Schedule to the Land Acquisition Act 1960. This sub-paragraph allows compensation for :

> the damage, if any, sustained or likely to be sustained by the person interested at the time of the Collector's taking possession of the land by reason of the acquisition injuriously affecting his other property, whether movable or immovable, in any other manner.

This means that if the acquisition of the appellant company's land injuriously affects their other property, they are entitled to be compensated for the damage, actual or likely on the date of the Collector taking possession, which in this case was 21 June 1973. (See p. 19 of Appeal Record). In this case we must agree with the appellant company's submission that in view of the fact that the land was acquired for a housing scheme, which when carried out would change the character and contour of the land, they could no longer rely upon that part of the catchment area which is included in the acquired area for their water supply to the mill. On the evidence before the learned Judge, there seems to be no dispute as to the injurious effect of the acquisition on the mill, because even DW2, a Drainage and Irrigation Department (DID) engineer who gave evidence for the Collector agreed and said that the acquisition would partly affect the source of water supply, but that this apprehended loss of water could be prevented if the acquired land is turfed. Hence the learned Judge awarded the cost of turfing as the measure of damage.

This appeal really turns upon one issue only, i.e. what is the measure of damage to be awarded for the likely loss of water supply to the mill?

Counsel for the appellant company strongly criticised the propriety of the learned Judge awarding the cost of close-turfing and also the impracticability of the turfing work to be done since the acquired land is no longer the appellant company's property. Impropriety and impracticability aside, this award clearly reflects the difficulty which this case has presented to the learned Judge. The appellant company claimed that the operation of this mill would be affected and this was agreed to by the respondent, but to what extent? Here the parties are at variance.

We know that this mill is a 60 tons of fruits per hour mill and that in order to work up to its maximum capacity, it requires 553,500 gallons of water per day and a stand-by supply of 25,000,000 gallons at all times. But the question is how much water would be lost by the acquisition? The evidence given by the appellant company's mechanical engineer (PW3) is that there would be a 30% loss, because the total area of catchment was only 300 acres, of which 100 acres were included as part of the acquired area. DW2, who is a DID engineer attached to the Klang District and who had visited the area to make a survey of the catchment area, on the other hand, disputed the size of the catchment area and the acquired area. He said that the total catchment area was 441 acres and that only 73 acres were included in the acquisition exercise, thus leaving a balance of 368 acres. In other words, less than a quarter of the catchment area was acquired as opposed to a third leaving only 200 acres as claimed by the appellant company's witness (PW3). Although the learned Judge did not make a specific finding as to the original size of the catchment area and how much of it was taken and how much of it is still left, it is not difficult to see from his judgment why he glossed over this issue.

He was obviously not impressed by the evidence given by PW3 and PW4 on behalf of the appellant company. It cannot be disputed that on 30 March 1982 the appellant company sent a letter to DW2 for permission to tap water from a nearby DID drain for use by their mill. The letter was signed by the appellant company's mill manager. Permission granted by DW2 was conveyed in his letter dated 8 April 1982. Yet in the face of this correspondence, PW3 denied that the drain in question serves both Bukit Raja Estate and another estate called North Hammock. PW4, the appellant company's manager for Bukit Raja Estate made it worse by completely denying that the Estate ever made such an application. These denials led the learned Judge to conclude-

> Why were they deliberately hiding the truth? Was it not because, contrary to their denials, the estate would have sufficient supply, if and when a shortage of water arises. That must be the necessary conclusion from the way they answered.
> (p. 80 of Record)

We could hardly disagree with the learned Judge's comments, as the evidence clearly demonstrates, that whatever loss of water, if any, could be remedied by making use of the alternative or additional source of supply, i.e. water from the DID drain. There is thus no basis at all for the appellant company to estimate the loss to be at 30% except for their contention that the original catchment area was already small (300 acres) of which 1/3 was acquired. In any case their claim and contention remain unproved and appear to be a mere exaggeration and speculation.

The cost of the mill and SMR factory as in 1965 was RM6,675,846 (p. 108 of appeal record, Pt. II). The claim of RM14,657,250 which the appellant company made before the Collector and the Court below and here is based on the full 100% replacement value of the mill. The sum is made up as follows:

(1) New 60 tons per hour Palm Oil & SMR Plant with ancillary buildings	...	RM10,585,000
(2) Additional transportation cost in perpetuity	...	3,772,250
(3) Cost of land - 15 acres @ RM20,000 per acre	...	300,000
Total		RM14,657,250

This was the estimate made by Mr. Cooper, the appellant company's engineering director on 2 August 1973 (see p. 109 of appeal record, Pt. II). Yet despite this estimate, PW3 whilst giving evidence before the learned Judge on 13 September 1982, increased the estimated replacement cost to RM33,000,000 for a 60 ton per hour mill and RM15,000,000 for a 30 ton per hour mill. We do not know on what basis he made this estimate. But whatever it is, the effect of this evidence is to convey to the Court a contention that even the claim for RM14,657,250 is low having regard to the current replacement value of RM33,000,000. In our judgment if the loss of water was estimated to be only 30% we fail to see how and why and on what principle the appellant company should be compensated with full 100% replacement value of the mill? Is this reasonable especially when their claim of 30% loss of water supply is not even proved?

That being the case, it is not surprising at all that the learned Judge accepted the evidence of DW2. He would have rejected the claim altogether had it not been for the fact that DW2 admitted that the source of water supply would be affected but that the extent affected would only be such as could be remedied by having the acquired land turfed. Hence he awarded the cost of turfing to be at 50 cents p.s.f. totalling RM231,000.

We now come to deal with Counsel's criticism of the award. This award, as we observed earlier, reflects the non-realistic nature of the appellant company's claim. There is no proper principle to base the claim for full 100% replacement value of the mill (whether it be RM14,657,250 or RM33,000,000) especially when the loss of water supply estimated to be 30% has not even been proved. What alternative was there for the learned Judge to rely? In our view he was not wrong nor in any way misdirected when he accepted the evidence of DW2 and awarded the compensation to be an amount equivalent to the cost of turfing because their loss would only be slight. This is a very reasonable approach and we are not

prepared to interfere. We certainly do not read the award as if it is an order for the appellant company to turf the acquired area at the respondent's expense up to the limit of the awarded sum. What the award amounts to is that a sum equivalent to cost of turfing at 50 cents p.s.f. of the acquired area should be a sufficient and reasonable amount of compensation for the possible minimal, we repeat minimal, loss of source of water supply to the mill.

Hence we dismiss the appeal with costs. The deposit should be paid to the respondent on account of taxed costs.

Also found at [1984] 1 CLJ 284